

Date: 20070529

Files: 550-18-1 to 3

Citation: 2007 PSLRB 57



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

AMBER HICKSON, MANON BERTHIAUME AND KATRINA BERLINGUETTE

Applicants

and

HOSPITALITY & SERVICE TRADES UNION, LOCAL 261

Respondent

Indexed as

Hickson et al. v. Hospitality & Service Trades Union, Local 261

In the matter of applications for revocation of certification under section 94 of the
Public Service Labour Relations Act

REASONS FOR DECISION

Before: [Dan Butler, Board Member](#)

For the Applicants: [Amber Hickson](#)

For the Respondent: [Karen Grella, Secretary-Treasurer and Business Manager](#)

Decided on the basis of written submissions
filed April 16 and 24, 2007.

REASONS FOR DECISION

Applications before the Board

[1] In separate applications filed on March 19, 2007, Amber Hickson, Manon Berthiaume and Katrina Berlinguette (“the applicants”) asked the Public Service Labour Relations Board (“the Board”) to revoke the certification of the Hospitality & Service Trades Union, Local 261 (“the respondent”) as the bargaining agent for the bargaining unit composed of all employees of the employer, the Staff of the Non-Public Funds, Canadian Forces, in the cafeteria of National Defence Headquarters (NDHQ) in Ottawa. The applicants sought revocation under section 94 of the *Public Service Labour Relations Act* (“the Act”), contending that the respondent no longer represented a majority of the employees in the bargaining unit.

[2] The Chairperson of the Board has appointed me under the authority of section 44 of the *Act* to hear and determine this matter as a member of the Board, based on written submissions.

Summary of the arguments

[3] The applicants submitted the following statement of their reasons for seeking revocation of the respondent's certification:

...

I do not want to be under the Union any longer.

Historically, the Union was brought in because there were a large number of persons within our work environment. This was mainly driven because the Cafeteria Staff and the Canex ExpressMart staff were both managed under PSP. Once the new food company (Aramark) was brought in as an Alternate Service Delivery (ASD) venue and took over the cafeteria, their staffs are no longer managed under Canex PSP. Currently there is only four (4) staff managed under Canex PSP. Interpersonal relations and work conditions are great and there are no problems within our store. I have never used the Union to address or solve any issues within my work environment and do not forecast using the union at all; now or at a later date.

...

[Sic throughout]

[4] The respondent filed a reply stating that it was “[N]ot in dispute with application [sic].”

[5] The employer did not oppose the application.

[6] Board staff have advised me that the last collective agreement for the bargaining unit expired on December 31, 2006, and that the bargaining agent has not filed a copy of a notice to bargain served on the employer pursuant to section 105 of the *Act*.

Reasons

[7] The record indicates that three out of the four employees in the bargaining unit no longer wish to be represented by the respondent. The respondent did not contest that the applicants constitute a majority of employees in the bargaining unit, nor, apparently, is there any dispute concerning the current size of the bargaining unit. I, therefore, find as a fact that the respondent no longer represents a majority of employees in the bargaining unit.

[8] The applicants submitted their applications for revocation of certification under section 94 of the *Act*:

94. (1) Any person claiming to represent a majority of the employees in a bargaining unit bound by a collective agreement or an arbitral award may apply to the Board for a declaration that the employee organization that is certified as the bargaining agent for the bargaining unit no longer represents a majority of the employees in the bargaining unit.

(2) The application may be made only during the period in which an application for certification of an employee organization may be made under section 55 in respect of employees in the bargaining unit.

[9] The applications were filed on March 19, 2007, after the December 31, 2006, expiry date of the collective agreement. Given that there is no record that the bargaining agent served notice to bargain prior to the expiry date of the collective agreement, there is no basis for finding here that the applicants were, as of the date of the applications, “. . . employees in a bargaining unit bound by a collective agreement or an arbitral award . . .”, as required pursuant to subsection 94(1) of the *Act*. On this

technical point, therefore, I should find that I cannot properly consider the three applications before me under section 94 of the *Act*.

[10] This strict interpretation of subsection 94(1) of the *Act* would mean that employees can only submit an application for revocation of certification where they are bound by a collective agreement, even if there is evidence that the bargaining relationship has ceased to exist, that the bargaining agent does not wish to renegotiate, or that it does not command majority support among the members of the bargaining unit. There are, obviously, potential pitfalls along this path.

[11] I leave contemplation of the implications of this interpretation to others should the matter arise elsewhere in the future. For purposes of the matter before me, there is another path to consider.

[12] The statement of the incumbent bargaining agent that it does not dispute the revocation applications is of substantial, practical significance. I take this statement as being equivalent to a statement that it has abandoned its certification in the circumstances at hand. This response, in my view, compels me to turn to section 99 of the *Act*:

99. The Board must revoke the certification of an employee organization if the employee organization advises the Board that it wishes to give up or abandon its certification or if the Board, on application by the employer or any employee, determines that the employee organization has ceased to act as bargaining agent.

[13] Given the operation of section 99 of the *Act*, and my finding that the employee organization has effectively abandoned its certification, I "...must revoke the certification of [the] employee organization"

[14] If I am in error about the application of section 99 of the *Act* to this situation, I would note that there would appear to be no practical consequences to this error. Neither the applicants, the respondent nor the employer have made submissions that suggest that there is any interest whatsoever in continuing the life of the existing certification. It is particularly noteworthy, in this regard, that the bargaining agent did not submit notice to bargain for renewal of the now expired collective agreement. I conclude from all of this that no public policy purpose would be served by making a different ruling.

[15] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

Order

[16] I declare that the certificate held by the Hospitality & Service Trades Union, Local 261, for the bargaining unit composed of all employees of the Staff of the Non-Public Funds, Canadian Forces, at the National Defence Headquarters (NDHQ), employed in the cafeteria, save and except persons above the rank of supervisor, office and clerical staff, is hereby revoked.

May 29, 2007.

**Dan Butler,
Board Member**